

1 materials, did you come to be aware that there  
2 was widespread objection among MVPDs to the  
3 pricing of the NFL Network?

4 A No, I did not.

5 Q So you didn't see any evidence in  
6 the materials that you were shown of  
7 widespread dissatisfaction with the pricing of  
8 the NFL Network by MVPDs.

9 A Well, I observed yesterday during  
10 the cross I believe of Mr. Furman some  
11 anecdotes suggesting that Cablevision thought  
12 it was too expensive and I've also seen  
13 through the testimony of Mr. Orszag a blog  
14 that was posted on Bright House's website. So  
15 I have seen -- I'm aware of certain anecdotes  
16 that NFL's price is high.

17 MR. BURKE: I'd like to mark an  
18 exhibit for identification, Your Honor.

19 JUDGE SIPPEL: Please. We have a  
20 number.

21 MR. BURKE: Comcast 417.

22 (Whereupon, the document referred

1           to was marked as Comcast Exhibit  
2           No. 417 for identification.)  
3           JUDGE SIPPEL: That's right.  
4   We're taking these in sequence. Comcast 417  
5   is identified as -- Would you identify it  
6   please?  
7           MR. BURKE: This is an email dated  
8   October 1, 2007 as well as an email string  
9   that's attached to it.  
10          JUDGE SIPPEL: And it's from Brian  
11   Decker to Steve Bornstein.  
12          MR. BURKE: That's correct.  
13          JUDGE SIPPEL: So this is an  
14   internal NFL.  
15          MR. BURKE: That is correct, Your  
16   Honor.  
17          JUDGE SIPPEL: It's marked for  
18   identification as you described it.  
19          MR. BURKE: Right.  
20          JUDGE SIPPEL: And it's Comcast  
21   417.  
22          BY MR. BURKE:

1 Q Have you ever seen this document,

2 Dr. Singer? Take your time.

3 A I'm going to start at the bottom

4 because it's an email chain. I can't recall

5 seeing this document.

6 MR. BURKE: Let's go through it.

7 I guess one question just in terms of how we

8 would admit this, Your Honor, before I go and

9 question the witness about this. I think that

10 it's indisputable that it's a document

11 produced by the NFL.

12 MR. SCHMIDT: We have no

13 objection.

14 MR. BURKE: So we'll move for

15 admission.

16 JUDGE SIPPEL: Go ahead. It's in.

17 (The document referred to having

18 been previously marked for

19 identification as Comcast Exhibit

20 No. 417, was received in

21 evidence.)

22 MR. BURKE: Thank you very much.

1 JUDGE SIPPEL: It's in. It's

2 received.

3 BY MR. BURKE:

4 Q Do you know who Steve Bornstein

5 is?

6 A I believe so.

7 Q He's the President and CEO of the

8 NFL Network, right?

9 A I believe so.

10 Q Okay. So at the bottom of this

11 email chain we have Steve Bornstein writing

12 Brian Decker "Do we have a WOW deal?" Do you

13 see that?

14 A Yes.

15 Q And I think we talked about WOW

16 yesterday. That's an acronym for Wide Open

17 West, right?

18 A Correct.

19 JUDGE SIPPEL: Wide Open West?

20 MR. BURKE: Correct.

21 BY MR. BURKE:

22 Q Actually is that correct, Dr.

1 Singer?

2 A That is correct.

3 Q All right. And Wide Open West is  
4 an over builder. Is that right?

5 A Correct.

6 Q And they actually compete in a  
7 region with Comcast. Is that right?

8 A I believe so. I can't say for  
9 certainty I know which areas of the country  
10 that the WOW has over built. They're a very  
11 small provider.

12 Q But, for example, they serve  
13 Michigan and then overbuild Comcast in the  
14 Michigan area.

15 A That sounds reasonable.

16 Q So Brian Decker writes back to  
17 Steve Bornstein, "Yes, they carry us on  
18 digital basic but haven't agreed to carry the  
19 games. I continue to go back and forth with  
20 them but they feel that the 12 month cost for  
21 eight games is too much and they want the  
22 right to move us to a sports tier since they

1     mainly compete with Comcast." Do you see  
2     that?

3           A    Yes, I do.

4           Q    Okay. And then there's a response  
5     to that and then at the very top the email I  
6     wanted to point you to you're welcome to read  
7     the whole thing, but the top email from Brian  
8     Decker to Steve Bornstein says, "Believe me.  
9     I understand they made that pitch. They just  
10    don't think the eight games are worth the  
11    price and they feel they should be given the  
12    same flexibility as Comcast." Do you see  
13    that?

14          A    Yes, I see it.

15          Q    Okay. Now you testified that the  
16    in region rivals of Comcast were MVPDs that we  
17    should pay particular attention to. Do you  
18    recall that yesterday?

19          A    Absolutely.

20          Q    And that in fact their experience  
21    is a very good comparison for Comcast in  
22    determining whether Comcast is engaged in any

1 discrimination. Do you recall that?

2 A Absolutely and that's the four  
3 most significant in region rivals carry the  
4 NFL with the subcharge in the most highly  
5 penetrated tier.

6 Q Now you used Wide Open West in  
7 regression. Isn't that right?

8 A Yes, I did.

9 MR. BURKE: Thank you. You can  
10 put that one aside. If I may, Your Honor.

11 JUDGE SIPPEL: Please.

12 MR. BURKE: I'll mark another  
13 exhibit.

14 MR. BURKE: Please. Yes.

15 MR. BURKE: This is going to be  
16 Comcast Exhibit 410.

17 (Whereupon, the document referred  
18 to was marked as Comcast Exhibit  
19 No. 410 for identification.)

20 JUDGE SIPPEL: Please just briefly  
21 identify it for the record please, Mr. Burke.

22 MR. BURKE: This is a cover email

1 from Brian Decker and he's attaching a  
2 PowerPoint presentation and it is dated -- I  
3 don't have it. Sorry. It is dated May 20,  
4 2008.

5 JUDGE SIPPEL: Okay, and the  
6 numbers are pages 656 to 667. Is that right?  
7 Using the last three digits.

8 MR. BURKE: Yes, that's correct,  
9 Your Honor.

10 JUDGE SIPPEL: All right. It's  
11 been identified as you have described it as  
12 Comcast Exhibit No. 410 for identification.

13 MR. SCHMIDT: And let me just say.  
14 I'm not sure this is an attachment. I'm just  
15 looking for the indication. I apologize. I'm  
16 just not seeing it.

17 JUDGE SIPPEL: That's okay.

18 MR. SCHMIDT: It doesn't have an  
19 attachment on it. I may be missing it.

20 MR. BURKE: I don't think it's  
21 critical. If we want to just focus on the  
22 PowerPoint presentation at the back and mark



1     that as a separate exhibit, that's fine.

2             MR. SCHMIDT: Okay.

3             JUDGE SIPPEL: How come everything

4     is redacted on the front two pages of this?

5             MR. SCHMIDT: I suspect this was

6     privileged, Your Honor, but I don't know the

7     answer sitting here right now. I'd have to go

8     back and look.

9             JUDGE SIPPEL: Privileged in the

10    sense of what? Of work product? It's not

11   work product.

12            MR. SCHMIDT: It's tough for me to

13   answer that on the fly, Your Honor.

14            JUDGE SIPPEL: Okay. Well, take a

15   look would you please?

16            MR. SCHMIDT: Absolutely.

17            JUDGE SIPPEL: Because I don't

18   want to be looking at any redacted material

19   if you're asking to assess the significance of

20   the document.

21            MR. BURKE: We're actually going

22   to be focusing on the PowerPoint presentation

1 at the back.

2 JUDGE SIPPEL: All right.

3 MR. BURKE: Not the cover email.

4 I think this is the way it was produced to us

5 in sequence. So we inferred that these

6 documents were related to each other.

7 MR. SCHMIDT: So do we just rip of

8 the first one?

9 MR. BURKE: That's fine with me.

10 JUDGE SIPPEL: What are you doing?

11 What are you ripping off?

12 MR. BURKE: Well, I would be happy

13 to keep it as it is as well. I think what

14 counsel for the NFL is suggesting is that we

15 remove the cover email and focus solely on the

16 PowerPoint presentation that begins at 660.

17 JUDGE SIPPEL: No, no. We're not

18 going to take anything -- we're not going to

19 rip anything off, 658. 656 is the first page.

20 657 is the second page.

21 MR. BURKE: Right.

22 JUDGE SIPPEL: 658 is where you

1 get the content.

2 MR. BURKE: That's correct and  
3 that was something that was part of the  
4 original email as far as we can tell and then  
5 there is a PowerPoint presentation that  
6 immediately follows it and we believe is  
7 attached to it.

8 JUDGE SIPPEL: And that's called  
9 660 and it's called Distribution and Sales  
10 Strategy.

11 MR. BURKE: That's correct.

12 MR. SCHMIDT: Yes, Your Honor.

13 MR. BURKE: And they follow next.  
14 That's the way they were produced to us next  
15 to each other.

16 JUDGE SIPPEL: So you're not sure  
17 that these documents are integral documents.  
18 They could be just cobbled together from  
19 various sources.

20 MR. BURKE: We don't think that's  
21 the case, Your Honor, but I don't think it  
22 really matters. So I don't want to belabor

1 the point. So if it would expedite things  
2 we're happy to just focus on the PowerPoint  
3 that begins at 660.

4 JUDGE SIPPEL: All right. See I  
5 still have my request to see if you can find  
6 me the redacts and I'll look at them in  
7 camera.

8 MR. SCHMIDT: We appreciate that,  
9 Your Honor.

10 JUDGE SIPPEL: And hand it back to  
11 you probably. Okay. Let's go.

12 MR. BURKE: So can we move to  
13 admit this into evidence, Your Honor?

14 JUDGE SIPPEL: If there's no  
15 objection.

16 MR. SCHMIDT: I don't see how this  
17 witness can be vehicle for admitting this. I  
18 would like to see just like Mr. Burke said --

19 JUDGE SIPPEL: Good point. Let's  
20 see how far the witness gets with it before.

21 BY MR. BURKE:

22 Q Do you recognize this document,

1 Dr. Singer?

2 A I don't recognize it right now,  
3 but I can't rule out the possibility that it's  
4 one of hundreds of documents that I've looked  
5 at.

6 JUDGE SIPPEL: He's starting with  
7 just page 660. Just this page.

8 MR. BURKE: Right.

9 BY MR. BURKE:

10 Q And I want to just focus you on  
11 certain passages in this document. You're  
12 obviously welcome to look at the entire  
13 document. I wanted to focus you on 662 which  
14 is entitled "Time Warner Cable." That's at  
15 the top. And sort of the bullet points  
16 listed, the first bullet point under Time  
17 Warner Cable lists "costs and level of  
18 distribution required by NFLN." Do you see  
19 that?

20 A Yes.

21 Q And it also references "anger over  
22 local and national marketing." Do you see

1     that?

2           A    Yes.

3           Q    And do you see anything on this

4     page indicating that from the NFL's

5     perspective there's any kind of collusion

6     between Comcast and Time Warner?

7           A    Again, I'm very sensitive to the

8     word "collusion" because I never asserted

9     that. I asserted that there's good evidence

10    that the decision to not carry was made

11   jointly. But if it's okay whether I can

12   answer or not there's any evidence to support

13   that hypothesis in this.

14          Q    If you could answer my question

15   that would be great.

16          A    Well, I think we're having a

17   problem and it happened yesterday too where I

18   believe you mischaracterized my testimony and

19   then asked me if I could find evidence to

20   support a mischaracterization.

21          Q    Well, I think your answer is no.

22   There is no evidence of collusion on this

1 page.

2 A But I don't want to grant you a  
3 mischaracterization of what I wrote in my  
4 testimony, what I said in during my  
5 deposition.

6 Q Dr. Singer, we're going to be here  
7 all afternoon if you refuse to answer the  
8 questions I ask you. Do you see any evidence  
9 on this page indicating that there is  
10 collusion between Time Warner and Comcast, its  
11 decision making vis ... vis the NFL?

12 A I can answer that question.

13 Q Great.

14 A The point that comes to mind, I  
15 think there's about ten points on this or 11  
16 points and the one that's closest to a piece  
17 of evidence that cited was the notion that  
18 they did jointly for the Sunday Ticket. My  
19 simple point on that is that if they're  
20 bidding jointly for one piece of NFL  
21 programming.

22 JUDGE SIPPEL: Wait just a second.

1 The outstanding question is and you read that  
2 to respond to was is there any evidence on  
3 that page of collusion between Time Warner and  
4 Comcast. Yes or no and then you can explain  
5 it.

6 THE WITNESS: There may be.  
7 That's what I -- What I'm pointing to is the  
8 fact, Your Honor, is that the parties have a  
9 history of bidding for NFL programming jointly  
10 that is a different type of programming. But  
11 all the same it is an NFL programming and in  
12 particular it's called the NFL Ticket. These  
13 are the out of region games that are now being  
14 purchased by DIRECTV.

15 So the third bullet says "Want  
16 Sunday Ticket considerations." And it just  
17 reminds me of the fact that they're likely not  
18 going after that Sunday Ticket programming  
19 independently. Instead they are going after  
20 it jointly and with Comcast. So it reinforces  
21 my suspicion that the decision with respect to  
22 other NFL programming is also being made



1 jointly.

2 BY MR. BURKE:

3 Q Dr. Singer, that was an  
4 interesting speech. There's no reference on  
5 this page to joint bidding for the Sunday  
6 Ticket. You're just elaborating on that,  
7 right?

8 A Correct.

9 Q Let's go to page six of this  
10 document which is 665 and there's a reference  
11 to "Mediacom" here. This is update on  
12 Mediacom. Do you see that?

13 A Yes.

14 Q And it says "cost/packaging  
15 remained the issues. They proposed ala carte  
16 subscription or sports tier as option." Do  
17 you see that?

18 A Yes.

19 Q And that's similar to the points  
20 that Comcast has made about the NFL Network,  
21 right?

22 A Similar to the points made in this

1 litigation, yes.

2 Q If you would turn to the next page  
3 which is 666 and this entitled "Others." And  
4 there's one reference to a Verizon update. Do  
5 you see that? "Verizon MSO update" in the  
6 second column.

7 A Yes.

8 Q And I think you testified earlier  
9 that Verizon is an in region rival of Comcast  
10 and so we should pay particular attention to  
11 that, right?

12 A To be precise, I said that I'd  
13 like to bring Verizon into my market  
14 penetration test but I couldn't because I was  
15 using the FCC's 2006 data and if I could then  
16 the carriage when you exclude Comcast would be  
17 even bigger than 50 percent.

18 Q And it lists -- It says "Verizon  
19 will be looking for a rate reduction and an  
20 MFN as part of a renewal." Do you see that?

21 A I see that.

22 Q And it says, their contract is set

1 to expire at the end of this year, right? Did  
2 you know that Verizon was going to be looking  
3 for a rate reduction in connection with this  
4 contract with the NFL this year?

5 A I didn't know it and it frankly  
6 doesn't surprise me. I'm looking for a rate  
7 reduction in my mortgage right now. We're all  
8 looking for rate reductions.

9 Q The next column says "AT&T MSO  
10 Update." And AT&T is another in region rival  
11 that you've suggested we should pay attention  
12 to, right?

13 A Yes.

14 Q AT&T is obviously a telephone  
15 company, but that it's entered into  
16 competition in the video business recently.

17 A Yes, and both AT&T and Verizon  
18 carry NFL Network on their most penetrated  
19 tier with a surcharge.

20 Q Right and AT&T the update for them  
21 it says, [REDACTED]

22 [REDACTED] Do you see that?

1           A    Yes, I do.

2           Q    Did you know that AT&T was  
3   expressing anger over their rate card and  
4   carriage level for the NFL Network?

5           A    I did not.

6           JUDGE SIPPEL: Where do you see  
7   that? I'm sorry. AT&T?

8           MR. BURKE: Yes, that's third  
9   column, Your Honor.

10          JUDGE SIPPEL: I see that. I've  
11   got the third column.

12          MR. BURKE: It's the second bullet  
13   point.

14          JUDGE SIPPEL: "Very focused on  
15   AT&T branding 7 something market."

16          MR. BURKE: No, I'm sorry. It's  
17   up on the -- it's on the first --

18          JUDGE SIPPEL: I see. Anger.  
19   Okay. Yes, I see.

20          MR. BURKE: I would like to mark  
21   another exhibit for identification.

22          JUDGE SIPPEL: So we've finished

1 with 410.

2 MR. BURKE: We are, Your Honor.

3 This document has already been, if I may, Your

4 Honor this has already been a trial exhibit.

5 We have extra copies. It might be easier than

6 going through the binders.

7 JUDGE SIPPEL: Yes, you may use it

8 that way. It doesn't look like it's too

9 cumbersome.

10 MR. BURKE: No, it's -- Yes.

11 JUDGE SIPPEL: Any objection.

12 It's going to be a repetitious exhibit.

13 MR. SCHMIDT: No. We appreciate

14 the courtesy.

15 (Off the record discussion.)

16 MR. BURKE: So this document has

17 already been I believe moved into evidence.

18 So we're not going to go through that.

19 BY MR. BURKE:

20 Q But I'll ask you, Dr. Singer,

21 whether you've seen this.

22 JUDGE SIPPEL: Wait a minute.

1 It's already -- Just a second. It's Exhibit  
2 52 Comcast. I'm going to still have it marked  
3 and received here as a cross examination  
4 exhibit because the record isn't going to be  
5 able to show and make any sense out of what  
6 you're saying. I understand where you're  
7 going.

8 MR. BURKE: Okay.

9 JUDGE SIPPEL: All right. So this  
10 is going to be this is pages 486 to 513 from  
11 Brent Fisher, is that right, to Mark Keys, et  
12 al., RE: AT&T and the date is June 26, 2007  
13 and this is an internal document from NFL  
14 Enterprise.

15 (Whereupon, the document referred  
16 to was marked as Comcast Exhibit  
17 No. 52 for identification.)

18 MR. BURKE: That is what we  
19 understand, Your Honor.

20 JUDGE SIPPEL: All right. Then  
21 it's marked for identification for cross  
22 examination. We'll just make an extra

1 notation. Cross examination Comcast Exhibit

2 52.

3 MR. BURKE: And I believe, Your  
4 Honor, just to make sure the record is clear,  
5 someone has passed me a note suggesting I  
6 should move Exhibit 410 into evidence.

7 JUDGE SIPPEL: Yes. Thank you.  
8 Whoever that person is, thank you very much.  
9 Is there any objection?

10 MR. SCHMIDT: The only thing we  
11 would ask, Your Honor, is did this with one of  
12 our exhibits where it was actually a combined,  
13 where there were two separate combined  
14 documents we marked them as two separate  
15 exhibits a and b. We'd ask that we do that  
16 here.

17 JUDGE SIPPEL: Well, what do you  
18 want to mark as a?

19 MR. SCHMIDT: Everything before  
20 page 660.

21 JUDGE SIPPEL: All right. So it  
22 will be 410(a) would be from 656 to 659 I

1     guess. Right?

2             MR. SCHMIDT: Yes, sir.

3             JUDGE SIPPEL: And then 410(b)

4     would be pages 660 et sequitur.

5             (Whereupon, the documents referred

6     to were marked as Comcast Exhibit

7     410(a) and 410(b) for

8     identification.)

9             Thank you. It's received in

10    evidence as identified.

11            MR. BURKE: Thank you, Your Honor.

12            BY MR. BURKE:

13     Q     So now turning to Comcast Exhibit

14    52 which I think we've taken care of the

15    housekeeping matters on that, this is an

16    email. The cover email is from Brent Fisher

17    dated June 26, 2007 with an attachment. Have

18    you see this document before, Dr. Singer?

19     A     I can't recall seeing it, but I

20    don't want to rule it out.

21     Q     Okay. I wanted to direct your

22    attention to the PowerPoint presentation



1 that's entitled "NFL Network Distribution  
2 Strategy Field Sales." Do you see that? That  
3 begins at page 487 and if we could turn in  
4 about four pages to page 490 and it's entitled  
5 "General Takeaways."

6 JUDGE SIPPEL: What page are you  
7 on?

8 MR. BURKE: It's the fourth page  
9 of the PowerPoint, Your Honor, and at the  
10 bottom it says "490."

11 JUDGE SIPPEL: I got it. General  
12 Takeaways.

13 MR. BURKE: Yes.

14 BY MR. BURKE:

15 Q And so we've got Time Warner, TWC,  
16 which is Time Warner Cable. Does that seem  
17 reasonable to you, Dr. Singer? And the third  
18 bullet point down says, "Major obstacles,  
19 price on distribution benchmarks, system  
20 pushback is primarily a cost issue. At a  
21 lower price, there's a place on the digital  
22 basic or potentially analog." Do you see